



## **MINUTES OF THE LAND RECLAMATION COMMISSION MEETING**

March 24, 2005

Chairman Jim DiPardo called the meeting to order at 10:00 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

**Commissioners Present:** Jim DiPardo; Bill Duley; Bob Ziehmer; Ed Galbraith; and Dr. Gregory Haddock.

**Staff Present:** Larry Coen; Tom Cabanas; Richard Hall; Mike Larsen; Larry Hopkins; Andy Reed; Mike Mueller; Bill Zeaman; Steve Femmer; and Shirley Grantham.

**Others Present:** Rich AuBuchon, Attorney General's Office; Stephen Preston, Office of Surface Mining; Jim Rolls, Associated Electric Coop., Inc.; Mikel C. Carlson, Gredell Engineering; Kathy Earickson; Gaylord R. Huenefeld; Omer Roberts, EAO, MDNR; Jason Branstetter, Capital Sand Company; and Representative Mike Sutherland, 99<sup>th</sup> District.

### **1. MINUTES OF THE JANUARY 27, 2005, MEETING**

Dr. Haddock made the motion to approve the Minutes as written. Mr. Duley seconded; motion carried unanimously.

### **2. ABANDONED MINE LAND ACTIVITIES**

**AML Status Report** (Attachment 1). Mr. Cabanas stated the Perche Creek Project is now complete with some tree planting, reseeding, and pond spillway maintenance planned for this spring. The Miller's Creek Project is almost completed, with only the installation of some terraces and rock waterways, liming, fertilizing, and reseeding left to be done.

Mr. Cabanas stated with regard to Non-Coal Shaft Closures, the Program has been receiving an average of one call or complaint regarding this type of issue per week. These also included some emergency projects with regard to subsidence. The Program recently closed the Fredericktown Shaft in Madison County. This was a collapsed shaft that opened up in a trailer park and threatened a water line, a trailer deck, and blocked the main entrance to the park. The hole was filled with quarry waste rock to be topped off later with some crushed limestone once the fill material has settled.

Mr. Cabanas stated regarding Emergency Projects, the Program investigated a subsidence

event that occurred in Macon County which was actually related to a coal mine. This

shaft was located near a residence. Mr. Cabanas stated since the hole represented a falling hazard as well as damage to nearby utilities, the Program elected to fill this particular hole. The hole was filled with quarry waste rock and topped off with topsoil material. He stated the staff also investigated a complaint in the Mindenmines area in Barton County regarding settling of the Mindenmines Christian Church building's foundation. The settling had caused some cracking of the foundation. The staff suspected that this was a mine related event because there had been a reclamation project near the church some time ago. However, upon the staff's investigative drilling, it was found that there were no voids underneath the church and attributed the settling to factors unrelated to coal. No additional drilling or grouting work was done at this site.

Mr. Cabanas stated in the area of Bond Forfeiture, maintenance projects planned for this calendar year include Burbridge Coal; Missouri Mining--Pits 17, 15, and 8A; North American Resources, Silver Creek Mine; North American Resources, Foster Mine; Universal Coal and Energy, Pits 7 and 51; and Yates Energy & Development. Reclamation projects planned for this calendar year include Missouri Mining, Pits 3 and 12. It is hoped that these two will be combined because the two sites are located very close together. With regard to Riedel Energy, Perry Mine, this project has gone from being a surety project to a state project. However, the Program will not be able to start on that project until a settlement is reached with the surety, Frontier in Rehabilitation, State of New York.

Mr. Cabanas stated Surety Reclamation projects include the Midwest Coal, Tiger Mine, and great progress is being made. It is hoped to have this project completed sometime this spring.

Mr. Cabanas stated it is also hoped that final repairs will be made to a problematic pond at the Universal Coal and Energy Renick Mine and that this project will also be completed by summer.

### 3. PERMIT ISSUES

**Old Law Coal Permit Renewal - Palmer Limestone** (Attachment 2). Mr. Cabanas stated this "Old Law" permit refers to Missouri's first coal mining law which was passed in 1971. This law has lower standards than the Permanent Program Law in effect today. Missouri's Permanent Program Law allows for this type of permit to be issued if the operator mines a total tonnage of coal that is less than 16-2/3 percent of other minerals taken from the same operation. Palmer Limestone has had this permit since 1995. The operator has not mined any coal out of the pit, but they have conducted surface mining activities at this mine for limestone since 1995. So, this is an active mine. Palmer Limestone has applied for this permit each year in the past in hopes that they will take

some coal out of the ground. Mr. Cabanas stated that once they do, the company would not have to provide the reporting activities that are required to prove that it has mined under that percentage tonnage of other commodities. The recommended action before the Commission today is the renewal of the application for Palmer Limestone. The application has been deemed complete. Therefore, the staff recommends the Commission issue a renewal of Permit OL 95-01 for Palmer Limestone for the surface mining of coal on 8 acres at a mining operation in Vernon County.

Dr. Haddock made the motion that the Commission follow the staff's recommendation to approve the renewal of Permit OL 95-01 for Palmer Limestone. Mr. Galbraith seconded; motion carried unanimously.

**Request for Hearing – Donald E. O'Brien Quarry, New Permit in McDonald County.** It was noted that this hearing request has been withdrawn.

**Buffer Variance Request - Gaylor R. Huenefeld** (Attachment 3). Mr. Mueller stated this request is that the operator be exempt from maintaining a 10-foot buffer width between the excavation and the water's edge of the flowing stream. He stated the in-stream sand and gravel operation encompasses 11 gravel bars along an approximate 2-mile stretch of Clear Fork Creek in western Montgomery County or about 5 acres. The operator is requesting that on those areas that are less than 60 feet wide, he would like to be exempt. This exemption request was received as part of a permit renewal application the Program received from Mr. Gaylor R. Huenefeld in January 2005. As a part of this renewal process, an in-stream sand and gravel operator is required to submit a completed Sand and Gravel Excavation Plan that will be used to replace the previous Stream Protection Plan. The Sand and Gravel Excavation Plan defines the rules and regulations upon which the operator must operate; however, the form provides the opportunity for an operator to request a variance on several of the specific requirements. In completing the new plan, Mr. Huenefeld requested that he be exempt from maintaining a 10-foot buffer between the excavation and the water's edge of the flowing stream as stipulated in item #2 of the Sand and Gravel Excavation Plan. In March 2005, Mr. Mueller stated he discussed the reasons with Mr. Huenefeld for the variance request. Basically, there are three main reasons for the request: 1) The operator has maintained a 10-foot buffer in the past, and, in doing so, trash and debris and unwanted materials accumulate in the area of excavation, especially when the creek rises to one-half to three-fourths bank full, and when the water comes up, it goes over the buffer and deposits trash and debris within the area of excavation, ruining the sand and gravel deposits; 2) many of the gravel bars are too narrow to maneuver and position equipment for loading and that it takes about 40 feet minimum to maneuver, to turn around, and to load trucks, and some of the bars average 25-45-60 feet wide; and 3) the buffer will concentrate and increase water velocity, thus reducing the amount of sand and gravel that drops out and is deposited on

the gravel bars during high flow events. Mr. Mueller stated that on January 25 and February 25, 2005, he and Mr. Andy Reed met on-site with the operator and Mr. Scott Voney of the Missouri Department of Conservation to discuss his variance and collect observational data and photographs. The purpose of the inspections were to collect the necessary information needed for the Staff Director and/or the Land Reclamation Commission to make a decision regarding the variance. State Representative Mike Sutherland of the 99<sup>th</sup> District was in attendance during the second meeting. Mr. Mueller stated that once the information was collected, he and Mr. Reed presented it to the LRP Staff Director; and he approved a narrower buffer zone on narrow areas of the gravel bars with sufficient access locations in order to get equipment into and out of the gravel bars. In response to Mr. Coen's decision, the operator stated that he really needed an exemption from the buffer on all areas that are less than 60 feet wide in order to efficiently excavate sand and gravel from his bars. The LRP staff informed the operator that the decision provided by the Staff Director would be presented to the Land Reclamation Commission and that he would have the opportunity to make a presentation regarding his variance request. Upon the Commission's review of all of the information, the operator would like a decision as to whether a variance to reduce the required 10-foot buffer is warranted.

Mr. Galbraith asked if it is the operator's request to reduce it or eliminate it?

Mr. Mueller stated the operator is requesting to eliminate the required buffer on those areas where the gravel bar is less than 60 feet.

Mr. Ziehmer asked if there was a buffer there now?

Mr. Mueller stated in the operator's mine plan, he is required to maintain a 10-foot buffer in his old stream protection plan. In the areas inspected, the operator had been leaving a buffer, for the most part. There were areas where the operator breaks into a bar and where he does not have sufficient room to maneuver whenever he breaks into the bar or in the ingress and egress areas. He was not maintaining the 10-foot buffer.

Mr. Ziehmer asked what the compliance history of the operator has been on the 11 bars?

Mr. Mueller stated that there was no record in the file of any site visits prior to the ones done in January and February 2005. From those inspections, it did not appear that the operator was out of compliance.

Mr. Ziehmer asked if there have been any calls or concerns regarding this operator?

Mr. Mueller replied no. This was all prompted solely because now the operator has to operate under an excavation plan.

Mr. Ziehmer asked what was Mr. Mueller's reaction when he saw the sites? Were they in good shape?

Mr. Mueller stated the operator runs a good, clean operation. The operator is a small operator, taking out only about 250 loads, under 3,000 tons over 5 acres.

Mr. Galbraith asked if the variance request was for the ability to take gravel within the buffer or merely a variance to move equipment for purposes of maneuvering, or both?

Mr. Mueller stated the operator does not like having the buffer because it affects his maneuverability on the small, narrow bars. Also, where the bars are wide, when the creek gets up, it deposits the trash over the top of the buffer and deposits it in the excavated area. Mr. Mueller stated he felt the operator would be willing to back drag these down, but this would still be considered disturbance. In Mr. Coen's letter to the operator, he stated that, basically, the Program would allow the operator permission to back on to those areas on occasion, but not to use them as roadway or haul road or constant access or disturbance, but, if on occasion, it got to the point where the operator had to get on it to load his gravel, that would be allowed.

Mr. Galbraith asked if it has been the historical practice to mine within that 10 feet?

Mr. Mueller stated he could not determine that when he was at the site.

Mr. Duley asked how many of the 11 gravel bars is the operator asking a variance for?

Mr. Mueller stated the operator has 3 gravel bars that average over 60 feet wide. Really, the operator is asking for the variance on all of the gravel bars.

Mr. Coen noted the history of this issue prior to today. He stated Mr. Huenefeld has been doing a clean operation. No one has complained about what he has been doing. The real question is an issue of policy and the issue of a new State rule. The Corps of Engineers began regulating this type of activity in 1995, and in their permit, they had a 20-foot buffer, which would have also allowed for a variance. The Corps was taken to court by the National Mining Association and lost that suit at the Federal Court level. Subsequently, the Corps got out of the business of regulating this activity in 1997. In 1999, the Land Reclamation Commission began regulating sand and gravel removal with no rules in place. In September 2001, the Program proposed rules believed to be identical to the rules that the Corps of Engineers had had in place in the 1990's. When the Program filed those rules, no one was happy. The Program then pulled the rules. Even though the rules were identical to the ones that had been in effect under a Federal permit, they did not pass the public review as a State rule. In July 2002, the Land Reclamation

Commission ordered a work group to propose rules that everyone could accept. Mr. Coen stated that work group met over several months and consisted of 41 people, which included 2 State Senators, Federal agencies, State agencies, environmental groups, landowners, local governments, mining industry, the group being fairly evenly represented as much as possible. Mr. Coen stated the issue of the buffer was the most highly contested issue the work group had to deal with. In fact, in the end, the work group did not really come to a consensus on what the width of that buffer should be. The environmental groups, who were very concerned about stream protection, felt that even the 20 feet that the work group started with was not enough. Industry felt that the 20 feet was eating into their resource recovery ability. So, the Land Reclamation Commission, after hearing all parties, through several hearings, through letters, phone calls, over a two-year period, set the buffer in May 2003 at 10 feet. The Department was on record as feeling that the 10 feet was not enough. In any case, the Program put together those rules that were finally agreed to by the Land Reclamation Commission through the normal rule process; and this rule became effective September 30, 2004, with the 10-foot buffer. There is a variance provision in that buffer. Because it was so highly sensitive to everyone in the work group, the Program is being very cautious about granting variances to those buffers. So far, the Program has granted one variance down to a 5-foot buffer instead of the 10-foot buffer. Mr. Coen stated that he understood at the point of access, where you have to cross the stream to get onto the gravel bar, there would not be a buffer at that point. But as far as just blanketly agreeing to no buffer anywhere the gravel bar is less than 60 feet, Mr. Coen felt was exceeding the intent of the rule and the understanding of the Commission. So because of that, this issue is before the Commission. He stated he felt it was important that since the Commission set the rule, they should be involved in deciding how to resolve this variance request.

Mr. Galbraith asked what the purpose of the buffer is?

Mr. Coen stated the purpose of the buffer is to make sure that there is no equipment operating in the flowing water of a stream.

Mr. Ziehmer stated that while equipment can operate on the buffer, the purpose is to keep the equipment out of the water, turbidity down, then is it the intent of the operator to get in the water at this point with his equipment?

Mr. Coen stated he did not think so. The operator crosses the stream to get to the bar.

Mr. Ziehmer asked whether the stream will go dry during the summer months because the rule reads that the buffer is measured from flowing water.

Mr. Galbraith asked, the regulations do provide for bonding in the event of sedimentation or other stream damage. Is the operation currently bonded?

Mr. Coen stated that sand and gravel operators do not need bonding as a quarry would. There is a provision that if the operator tears up the stream, the Program can then require bonding.

Mr. Ziehmer asked where is the trash coming from that is in this stream? What is going on upstream?

Mr. Coen stated he did not know. No other operator has asked the Program for a variance because of the deposit of debris and fines inside the buffer. So this is a new issue. He stated he did not know if debris means so much trash and limbs and branches and leaves or if it really means human waste such as bags, etc.

Mr. Mueller showed slides of the operation and the various gravel bars.

Mr. Galbraith asked whether it would be feasible that an operator would mine right up to the water's edge and not affect stream quality, is it possible for a careful operator to do that?

Mr. Coen stated it is possible.

Mr. Huenefeld stated one of his concerns is that on the 10-foot buffer, especially on the narrow bars, when the creek comes up and you have the 10 feet there, it divides the water and the water, when it does that, cuts out the gravel instead of leaving the gravel. What he wants is the gravel. If the bars are flat and smooth, when the creek gets up, he catches gravel. If there is an obstruction, he doesn't. If the water brings a snag on the gravel bar, the water cuts around it and will take all of the gravel off the whole bar. It would ruin everything, just the diversion. This particular creek moves pretty fast and has a lot of fall to it. Regarding the debris and trash, he stated that is mostly leaves, sticks, dirt, a few tires, soda cans and bottles, etc. On one of the bars, when the Corps of Engineers had the authority, the reason the bar is only so wide is that when he left that, back behind where he is taking gravel out now, there is a good 1- to 1-1/2-foot of trash under there, it is just mud. It just rendered it useless. It does take quite a bit of room to load and you can load in smaller areas, but it is costly when you have to twist stuff around to do it.

Dr. Haddock asked whether this would mess up the bottom of the skid loader as well?

Mr. Huenefeld stated very quick. That is another reason not to get into the water with a loader.

Dr. Haddock asked how long Mr. Huenefeld has been operating?

Mr. Huenefeld replied 20 years.



Dr. Haddock asked when you mine one of the gravel bars, how long does it take for the bar to build back up again?

Mr. Huenefeld stated if the creek runs half full to bank full, it takes a long time. If the creek breaks over the banks, which it won't do very often anymore because the channel is cleaned out, it would fill up everything immediately.

Mr. Duley noted that bedrock was evident in the photos of the creek. Is it common up and down the creek?

Mr. Huenefeld stated it is solid rock up and down the creek.

Mr. Galbraith noted that Mr. Coen's letter states that Mr. Huenefeld has been taking good care of the gravel bars and believed he would in the future. Is there something that Mr. Huenefeld would be willing to do in terms of stream sampling or monitoring or notify the department when the operator is cleaning off these areas that are close, just something that goes up and beyond to make sure that the good practices will continue in the future?

Mr. Huenefeld stated he didn't know, but that representatives of the Commission are welcome to come to the site at any time.

Mr. Coen stated he wished the Program could do a plan of inspections that would have a frequency on it, but with only four inspectors on staff to cover the entire state, there is no way the Program can visit the site on a regular basis.

Mr. Duley asked if the Program staff could recommend something that Mr. Huenefeld could do to monitor and verify on a routine basis that things are going along as expected?

Mr. Coen stated the staff could devise something.

Mr. Huenefeld stated he had no problem with leaving the 10-foot buffer, unless the gravel is 2-3 feet high up next to the water, except when the gravel is piled up on the outside. As long as he can back his loader on it to load, he had no problem with it.

Mr. Galbraith noted that the operator wanted to not only be able to maneuver on the area where he needs to, but to also take the gravel from time to time because that is his supply of gravel.

Mr. DiPardo asked the operator if he was primarily in the gravel business or whether he also did sand?

Mr. Huenefeld stated he was basically a farmer and that the gravel operation was used to help pay the bills.

Mr. Coen noted that the operator had stated that it would not be a problem to leave a buffer as long as it wasn't too tall. Where would the operator's cutoff be for being too tall?

Mr. Huenefeld replied 2 feet. If a loader can back up on it, it is not too tall.

Dr. Haddock asked if a variance request were granted, that as part of the statement be that the Program monitor and check the area with the results brought back to the Commission?

Mr. Coen stated that is a possibility. Also, the operator has indicated that he is willing to have a buffer as long as it is not too tall, which is different from not having any buffer.

Mr. Ziehmer asked that according to the slides presented today, there were several bars that appeared to not have been mined at least since the last high flow. Have there been some of the bars that the operator has not been on in a year or two?

Mr. Huenefeld stated that he had not taken anything off the one small bar in the middle. The only time he takes anything off it is when it builds up so as to force the water over against the bank. He takes some off so the water spreads out when it flows through the area instead of cutting the bank.

Mr. Ziehmer noted that the purpose of the buffer is to keep equipment out of the water and to keep turbidity down and help to keep the channel more stable during high flows. Based on the slopes shown on the slides, it appears that about 6 of the 11 bars would be affected. A 5-foot buffer, would there ever be a time when that material was 2 feet high?

Mr. Huenefeld replied most places, no. The flatter the gravel bar is when the creek gets up, the quicker it starts dropping gravel. If the water is cutting around something, it won't drop gravel.

Mr. Ziehmer stated the 5-foot buffer he described would make the bar look like a donut after the site was fully mined. There would be a small buffer, and the regulations say just enough to ensure bank integrity and then there would be 5 feet, or whatever the distance would be, upstream on the side and then downstream.

Mr. Huenefeld stated as long as he could get in and out. Most places, with 5 feet, the gravel is not going to be very high at all. Most places, it won't be 6 inches above the water level.

Mr. DiPardo stated that most owners, such as this operator, are not going to risk messing up their own property because it is their livelihood and they own the land and will look out for their own interests. He stated the operator should know his stream better than anyone.

Mr. Galbraith asked Mr. AuBuchon whether the Commission has the authority to grant a variance permanently or is it one year or two years or is there any time frame on the Commission's abilities in this instance?

Mr. AuBuchon stated that when the permit comes up, the issue of the variance would be considered again as part of the renewal process. It is an annual renewal.

Mr. Galbraith noted there would then be an annual ability to review this issue again if there is a problem.

Mr. Coen stated all this would not occur annually.

Mr. Galbraith asked if the variance was granted to such that it would only apply to Mr. Huenefeld as operator and not transferable, would the operator have a problem with that?

Mr. Huenefeld stated no.

Mr. Galbraith asked if, for some reason there were stream quality problems that were documented or sufficient complaints, the variance would be disallowed or canceled, would the operator have a problem with that and limited to the existing areas, not expanding into any new, it would apply to the 11 bars?

Mr. Huenefeld stated no.

Mr. Galbraith asked the operator if he thought a 2-foot buffer in terms of height is something that he could maintain?

Mr. Huenefeld stated if it gets too high that he can't back on it, then it is too high.

Mr. Galbraith asked about a letter issued by the Department of Conservation which indicated opposition to the recommendation of a variance.

Mr. Ziehmer stated that during the site visit, there was a Conservation staff biologist out on the site. Following up on that visit, the biologist did write a recommendation letter. In hind sight, portions of that letter which DOC is currently working through with the staff, are inconsistent with the agency's position or thought. The letter does reference that the goal is to keep equipment off the buffer. The buffer does serve more

than one purpose, but as far as equipment, it is to keep equipment out of the water. Mr. Ziehmer stated that, in addition, there have been some points discussed here today about the history of the operation, compliance history, and other points which were not taken into consideration by the biologist.

Mr. Galbraith asked if the Department of Conservation would be issuing a new letter?

Mr. Ziehmer stated that at this point, it is before the Commission, and that in hearing what has been discussed today, the Commission may not be moving towards eliminating buffers, but rather at the 6 out of the 11 sites, looking at a reduced buffer from 10 feet. The issue has changed since the site visit. The issue is that there is support for a buffer, but it is the buffer height and width that is at question. Mr. Ziehmer stated that based on discussions in past years, it might be easier for department staff to measure a distance than a height. Currently, the regulations regarding the buffer are measured from the edge of the water at the time of excavation. Mr. Ziehmer asked Mr. Coen what his thoughts were regarding LRP staff going out and trying to measure the depth?

Mr. Coen stated the buffer height would be in relation to the inside gravel bar, not height from the water level, but height from the excavated gravel level.

Mr. Ziehmer asked Mr. Coen for ease for staff, is it easier to measure the distance from the water line to the point of excavation at the time of inspection?

Mr. Coen stated that as far as the buffer width, which is what the staff has historically looked at, it is the width from the water's edge in, but the height in the context of the discussion today is the height that the operator needs to back up onto it. So, it is the height from where the operator is working to the top of the buffer.

Mr. Galbraith asked if the Commission established something like that, would the staff have the capability of measuring that?

Mr. Coen stated yes.

Dr. Haddock stated it would probably need to be two different measurements--average height of the region of the buffer and the average height of the actual portion of the bar that is capable of being excavated.

Mr. Coen stated the staff does not currently go out with a tape measure and measure buffers. The staff visually looks at the operation, and generally by appearance can determine whether or not things are acceptable. He felt the staff would continue to do that. The staff does not have a lot of time to stop and measure gravel bars.

Mr. Galbraith asked if permits are transferable from owner to owner or are they required to get a new permit?

Mr. Coen stated a permit can be transferred, but the act of transferring requires all of the same parameters as getting a new permit such as public notice, filing of the plan, etc.

Mr. Galbraith asked whether the variance would be transferable with the permit?

Mr. Coen stated he had not been asked that question before. However, a statement could be put in.

Mr. Galbraith noted then if the owner changed, that would flag everything. Then the variance could be looked at again.

Representative Sutherland stated he had visited the site with the staff and felt the staff was doing a good job in dealing with the situation. Mr. Huenefeld has been farming in the area for over 20 years. Representative Sutherland stated he felt the operator has been up front in detailing what he is doing there and has been doing a good job in the past. Mr. Sutherland stated he felt the operator has a very sincere commitment to having a sustainable resource not only in the stream but also the gravel bars too. He asked that the Commission consider the operator's request for the variance and try to find something that is workable for the operator as well as the staff so that the operator can continue his operation and continue his livelihood, which a lot of it comes from the gravel that he is able to mine.

Mr. Ziehmer made a recommendation for discussion that on the six sites in question that are less than 60 feet in average width that the Commission support a variance from the 10-foot buffer down to a 5-foot buffer. On the other five sites, the 10-foot buffer would stand with no variance on those.

Mr. Huenefeld was asked if he would be satisfied with that? He stated that as long as he can move his equipment in and can back up on the buffers and as long as they are not too high.

Mr. Coen stated that it was his understanding that even on those wider gravel bars where there is a 10-foot wide buffer, the operator is still asking for a variance to the height of the buffer.

Mr. Huenefeld stated that was correct.

Mr. Coen stated that even if the operator leaves the buffer, he would want to pull down the height if it is too tall to back up on it.

Mr. Galbraith asked if this was not allowed now?

Mr. Coen stated it is a factor of each gravel bar. If the gravel bar is generally flat, then the buffer is not going to be very tall. If there is a gravel bar that is 5 or 6 feet tall, then there could be a pretty tall buffer.

Mr. Ziehmer stated that based on the good compliance history of the operator, he asked that his recommendation stand that on those six sites, the variance be reduced to 5 feet.

Mr. Galbraith suggested an amendment that the variance applies insofar as there is no documented impact to stream quality.

Mr. DiPardo asked whether Mr. Huenefeld would be satisfied with what the Commission has recommended and discussed so far? He stated the Commission would like to reach a compromise with the operator, but not place him back where he was.

Mr. Huenefeld stated he did not want to leave enough of a bar out there that would cause the water to go around and cut the bar on the side. If the bar is low enough that the loader can back up on it, it will not cause that problem. He agreed that he could live with the recommendation on the six of the eleven gravel bars.

The above recommendations resulted in the motion that the Commission grant a variance on 6 of the 11 gravel bars which 6 would have a buffer of 5 feet and that there would be no stream impact. Dr. Haddock seconded; motion carried unanimously.

Mr. Huenefeld asked if he understood what the Commission had approved was that it would be 5 feet on the 6 narrow gravel bars and that he could still get on that 5 feet, and on the other gravel bars, if the 10 feet is too tall, he could knock it down.

Mr. DiPardo stated that was correct.

#### 4. ENFORCEMENT

**In Re: J. M. Burger** (Attachment 4). Mr. AuBuchon stated he represented the Missouri Department of Natural Resources and the Land Reclamation Program in this permit appeal. This appeal was brought forth by J. M. Burger in regard to a bond Notice of Violation that was issued by the Program and a Formal Complaint that was issued by the Program in 2003. The Program tried to work with the company on several occasions during the past two years to get the company's canceled bond renewed and submit new bonding. The law requires that any permitted operator who is engaged in surface mining maintain a bond for their permit, and the Program required J. M. Burger to do so.

Mr. AuBuchon stated that, however, the company failed to do so. A hearing was held in November 2004 before the Administrative Hearing Commission brought by J. M. Burger to determine the outcome of the formal complaint. J. M. Burger did not attend the hearing. The Administrative Hearing Commission has set forth its Recommended Decision. It is the Program's and the Department of Natural Resources' wishes that the permit of J. M. Burger be revoked and the bond be forfeited at this time.

Dr. Haddock made the motion that the Land Reclamation Commission follow the recommendation of the Administrative Hearing Commission to revoke the surface mining permit for J. M. Burger. Mr. Duley seconded; motion carried unanimously.

Mr. AuBuchon stated the bond has been canceled by the surety company. However, the Program would also like to forfeit the bond to have the land reclaimed, even though the bond has been canceled. The Program and the Department of Natural Resources would also like to seek the Commission's approval to go after the bond money from the surety company to reclaim the property. He stated the process is somewhat cumbersome. The Hearing Officer has set forth his proposed findings and may have neglected to put forth that matter in his proposed findings. That does not limit the Commission in what they would like to do further beyond the Hearing Officer's proposed findings. This is an administrative action by the Commission to forfeit the bond so that the Attorney General's Office can go forward and get that money and reclaim the land.

Dr. Haddock made the motion that the Land Reclamation Commission begin the process of forfeiting the bonds of J. M. Burger for the purpose of beginning the reclamation process for the land of J. M. Burger. Mr. Galbraith seconded; motion carried unanimously.

**Hearing Request on Formal Complaint #2701 - Colonial Limestone, Inc.** (Attachment 5). Mr. Larsen stated that the Commission signed Notice of Formal Complaint #2701 for Colonial Limestone at its January 2005 meeting. The Formal Complaint was issued in response to the company's failure to abate a Notice of Violation. Following receipt of the Notice of Formal Complaint by the company in February 2005, the Program received a request from the company that a hearing be held. Mr. Larsen stated the request was received within the 15-day time frame allowed. The staff therefore recommends to the Commission that a hearing be held and that the matter of the hearing be (1) referred to the Administrative Hearing Commission to review the Formal Complaint; and if this is not possible (2) decide to review the Formal Complaint through the appointment of a Land Reclamation Commissioner to act as Hearing Officer; and if this is not possible (3) appoint an independent hearing officer to review the Formal Complaint.

Mr. Galbraith made the motion that the Commission accept the recommendation of staff to have a hearing by using the above three options in the order they are listed. Dr. Haddock seconded; motion carried unanimously.

**S & S Quarries, Inc., Appointment of Hearing Officer.** Mr. Larsen stated the case regarding S & S Quarries in the case of the hearing request on the Notice of Formal Complaint # 2700 was referred to the Administrative Hearing Commission. He noted the Program had received a letter from the Administrative Hearing Commission indicating that it is not able to accept further cases as it does not have adequate resources to handle all Department of Natural Resources cases. Mr. Larsen stated he was not aware of the Administrative Hearing Commission's position when he presented the request for a hearing by S & S Quarries at the January meeting. He stated that the Program recommends that the Commission decide to review the Formal Complaint through the appointment of a Land Reclamation Commissioner to act as Hearing Officer, or if that is not possible, to proceed to appoint an independent Hearing Officer to review this matter.

Dr. Haddock made the motion that the Land Reclamation Commission allow the Program to seek out another Hearing Officer, whether it be a Commission member or whether it is an independent Hearing Officer. Mr. Galbraith seconded; motion carried unanimously.

5. BOND RELEASES

**Coal:** (Attachment 6)

Mr. Hall noted the Office of Surface Mining (OSM) processed the bond release request for Associated Electric Cooperative on behalf of the State of Missouri.

**Associated Electric Coop., Inc., Prairie Hill Mine, Permit 1985-06, PP-04-07:** This release request is for Phase I and II release on 38.6 acres, Phase II release on 865.86 acres, and Complete/Undisturbed release on 63.4 acres for a release amount of \$235,700.00. Associated Electric is self-bonded, so there is no actual monetary release; it just reflects a reduction in their liability of that amount. The release request application was deemed to be adequate and complete. Mr. Hall stated OSM conducted a field inspection of the proposed release area on January 25, 2005, and found that the areas had been graded to the required approximate original contour, topsoil was redistributed in accordance with the permit and performance standards, and no acid- or toxic-forming materials were identified near the surface of the release area. A permanent diverse cover of vegetation adequate to control erosion has been established throughout the permit. All pasture and nonprime cropland areas have a cover that equals or exceeds 90 percent of desirable species, with no significant areas containing weeds or devoid of vegetation. Vegetative cover of mixed cool season grasses and legumes has been established that is



consistent with the reclamation plan on these areas. Mr. Hall stated that previously mined pasture, areas that had been affected by earlier mining activities and then reaffected during Associated's activities, do not have to have topsoil and they have a slightly less ground cover requirement of 70 percent. It was found that that cover requirement is met or exceeded on all of those areas. Nonprime cropland has had two years of successful productivity data submitted by the company. The area also includes wildlife areas that are well established and diverse in grass and ?? species. None of these areas contained less than 70 percent in ground cover of desirable species and no significant weed or bare areas. All engineered structures such as diversions, drainageways, impoundments, etc., are permanent features that were identified on the reclamation plan. Each of the structures is adequately designed, constructed, and maintained. All haul roads have been reclaimed in accordance with the standards in the reclamation plan for the permit, and areas being requested for Complete release as being unaffected by mining related activities exhibited no signs of disturbance by the mining operation. There were no erosion problems or off-site impacts observed. Land uses include wildlife habitat, pasture, water, road/industrial, nonprime cropland. It also includes previously mined pasture, previously mined wildlife habitat, previously mined water. The reason they are separated out is that they do have slightly different reclamation standards. Primarily, there is usually no A horizon topsoil, because it was already eliminated during the earlier mining processes. Therefore, following the in-depth review of the release application and the field inspection, OSM concluded that the permittee has met all the requirements for the release and recommends approval as requested. The Program staff recommends the Commission follow the recommendation of OSM.

Dr. Haddock made the motion that the Commission follow the recommendation of the Office of Surface Mining and allow the bond to be released for Associated Electric for bond release application PP-04-07. Mr. Ziehmer seconded; motion carried unanimously.

**Universal Coal & Energy, Permit 1984-05, Forfeiture Site Liability Release**

**# BF-05-01** (Attachment 7). Mr. Hall stated the Commission revoked the coal mining permits issued to Universal Coal & Energy on September 24, 1996, and forfeited their reclamation bonds, and which was done through negotiated settlement with the bonding company. Permit 1984-05 was issued to Universal in November 1984 and consisted of 5 acres that were permitted for the purpose of construction and maintenance of an explosive storage facility. The current and past landowners have maintained this particular piece of property very well since the permit revocation in 1996. Mr. Hall stated some of the landowner's activities included removal of mine related debris and maintaining the access road surfacing, as well as mowing, etc. The site looks good. The area was not a pit, so there was not a lot of reclamation to be done on this area. Recently, this permit was assessed for current reclamation needs; and it has been determined that the area has been

reclaimed adequately to qualify for release of reclamation liability. Mr. Hall stated there are bridge supports remaining on the area that were used for past mining purposes, but they are currently owned by a previous landowner and, therefore, not considered a State reclamation liability. This residential use, 5-acre area is non-erosive, stable, and well vegetated. The landowner was contacted via certified mail regarding the staff's intent to release liability at this mined area, and the public notice was run in a newspaper of general circulation in Howard County. No public comments or objections to the proposed release have been received. Mr. Hall stated it is the staff's recommendation that the Commission release the final reclamation liability on 5 acres of land previously permitted by Universal Coal & Energy Company, Inc., under Permit 1984-05.

**Missouri Mining, Inc., Permit 1982-04, Forfeiture Site Liability Release # BF-05-02** (Attachment 8). Mr. Hall stated on September 22, 1997, the Commission revoked all of Missouri Mining's permits and forfeited their reclamation bonds also through a negotiated settlement agreement with the surety that had provided the bonding. Permit 1982-04 was issued to Missouri Mining in May 1982 and consisted of 535 acres referred to as "Pit 3." Of that original acreage, 222 acres were determined to be undisturbed and were completely released by the Commission in March 1984, after the company indicated they were no longer interested in mining that particular area. Recently, the LRP staff has been reviewing the Pit 3 area and developing a reclamation plan for the area. During this review, it was determined that approximately 25 acres of the 313 acres remaining under reclamation liability were initially affected prior to 1978 under the "Missouri Strip Mine Law" ("Old Law"). Missouri Mining repermited this 25-acre area of Old Law disturbance under the current Permanent Program law in anticipation of the continuation of mining in the area. However, the company did not reaffect the area under the Permanent Program law. As a result, the reclamation standards that apply to the 25-acre area are the Old Law grading and vegetation standards. Old Law standards prescribe that an area be graded to rolling topography, traversable by standard farm machinery, and that it be sufficiently vegetated with acceptable plant species to control erosion. Water impoundments may be approved to be left, and up to 25 percent of the area does not have to meet the rolling topography/traversable standard if it is reclaimed to a condition suitable for use by wildlife. An inspection of this area revealed that the 25-acre area does meet the Old Law reclamation standards in its current condition. As a result, the staff is proposing that the Commission release the State of further reclamation liability on this area. Landowners have been contacted regarding the staff's intent to request release of liability at this mined area. A public notice of the proposed release was run in a newspaper of general circulation in Putnam County. No objections or adverse comments to the proposed release have been received as a result of these public notification efforts. Mr. Hall stated that, therefore, the staff recommends that the Commission release the final reclamation liability on 25 acres of land previously permitted by Missouri Mining under Permit 1982-04.

Dr. Haddock made the motion that the Commission follow the staff's recommendation to release the final forfeiture reclamation liability for Universal Coal & Energy, Inc., Permit 1984-05, Release No. BF-05-01 and Missouri Mining, Inc., Permit 1982-04, Release No. BF-05-02. Mr. Ziehmer seconded; motion carried unanimously.

6. OTHER

**Comments From the Public**

A lady indicated it was her understanding that there was not going to be any more private property reclaimed and asked if that was true or who she should contact to find out?

Mr. Coen noted she was referring to the Program's loss of the Abandoned Mine Lands funding. He stated the agency that funded that is the Office of Surface Mining and that she could talk with the representative from that agency in attendance at the meeting.

Mr. Ziehmer asked if it was correct that there are some remaining monies and some remaining activities ongoing, but if that revenue is not renewed, the current amount would run out by the end of the 2005 calendar year and all activities stop?

Mr. Coen stated there is about \$500,000.00 left, and that money is being used by the Program to perform maintenance on projects that have already been finished and to close dangerous shafts where the Program finds them. The Program is not starting any other kind of projects because of the fact that the money is almost gone.

**Closed Session.** Mr. Duley made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on May 26, 2005, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Dr. Haddock seconded; motion carried unanimously.

**Adjournment.** The meeting was adjourned at 12:00 p.m.

Respectfully submitted,

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Chairman